

MEETING MINUTES, BOARD OF ZONING APPEALS, OCTOBER 22, 2007

Present: Phil Tinkle, Mike Campbell, Shan Rutherford, Shawna Koons-Davis, City Attorney, William Peebles, Senior Planner; and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Phil Tinkle, Chairman.

Tinkle announced the first order of business was to suspend the rules to allow 4 petitions to be heard this evening. Rutherford moved to suspend the rules to allow the 4 petitions to be heard, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

PREVIOUS MINUTES

October 8th – Campbell moved to approve the minutes as mailed, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

FINDINGS OF FACT

Docket V2007-019 – Use Variance – Cabela's

Rutherford moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2007-019, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

OLD BUSINESS

Docket V2007-022 – Dimensional Variance – Sutton Park Shoppes – located at the corner of SR 135 & Sutton Park Drive – request to allow a 15' building setback along both Marlin Dr. & Sutton Park Dr. – Hai Duong, owner; Sutton Park Shoppes, applicant.

Newspaper notice was only 13 days rather than the required 15 days. Campbell moved to allow the 13 days notice, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Paul Maurer, Maurer Surveying; and Bob McGill, Peterson Architecture; came forward and were sworn.

The proposed site plan was presented. Maurer explained what improvements are being proposed for the site. The setback variance is being requested to help provide a more urban feel and a better streetscape for the project. All four sides of the building will be "fronts" of the building due to the proximity to the adjoining streets.

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The combination of right-of-way and the proposed building setback would provide adequate room to accommodate sight lines along both Marlin Drive and Sutton Park Drive. Additionally, neither of these streets are intended to be expanded beyond their anticipated width; therefore, the proposed building would not need to be acquired for future roadway expansion.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The property would replace several existing single-family residential structures with a new multi-tenant commercial structure and accommodate the extension of Marlin Drive. This redevelopment effort should enhance the property values of adjoining properties.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The strict application of the Ordinance would dictate a strip center setback from the road to accommodate parking in front of the establishment. With the granting of this variance a more urban streetscape can be encouraged enhancing the aesthetic appeal of Marlin Drive.

4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10 because
Answer: The property is not within the Airspace Overlay District and is located 20,816 feet from the runway of the nearest public use airport.

Janet Julius, 542 S. St. Rd. 135, Greenwood, came forward and was sworn. She is concerned about the increase in traffic in this area. She is also concerned about the gravel roadway to the south of her building. She feels if there is access in that area people will be driving onto her property. Margaret McGovern, 339 Highland Drive, Greenwood, came forward and was sworn. She stated she was informed that Marlin Drive would never go through to Smith Valley Rd. She stated that the hardship is that too large of a building to fit on this site is being proposed. A smaller building could be constructed and meet the setbacks.

Maurer came forward for rebuttal. He stated that he feels that the extension of Marlin Drive to Smith Valley will actually help the backup of traffic in this area. He anticipates the graveled area mentioned by Ms. Julius will be made into green space.

The meeting was recessed at this time due to lack of quorum for a short period of time.

The meeting was reconvened.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board approve the granting of a dimensional variance for building setbacks to Sutton Park Shoppes located at SR 135 & Sutton Park Drive, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2007-022, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Campbell. Vote for **approval** was unanimous. **Motion carried.**

NEW BUSINESS

Docket V2007-023 – Special Exception – Sikh Temple – located at 1050 S. Graham Rd. – request to allow Sikh Worship Temple in a residential zone – Chanchal Singh, applicant; Satwant Singh Nijjar & Chanchal Singh, owners.

Chanchal Singh, petitioner; came forward and was sworn. He explained there are a large number of members of the Sikh community moving into Greenwood and a place of worship close to home is needed. The petitioner is agreeable to all recommended comments listed in the staff report.

1. **Criteria:** Appropriate screening and buffering of the site, including refuse and other service areas, is provided to ensure that the use will be compatible with neighboring properties and will be present for acceptable views from public ways. **Answer:** A concrete parking area will be installed, with markings. A dumpster will also be installed.
2. **Criteria:** Ingress and egress to the site and to structures is safe and adequate, and on-site circulation is also safe and adequate. The Board of Zoning Appeals may receive recommendations regarding ingress and egress and site circulation from the City Engineer and

the Fire Chief. The Board of Zoning Appeals may also request that the applicant provide a traffic impact analysis. **Answer:** A traffic impact analysis can be provided, as well as all other required items.

3. **Criteria:** Satisfactory parking and loading facilities are provided. **Answer:** Once approval of variance is granted, all parking requirements of the city will be met.
4. **Criteria:** Adequate utility services and related facilities are available. The Board of Zoning Appeals may require written evidence of this availability from utility authorities. **Answer:**
5. **Criteria:** Adequate yards and open space are provided. **Answer:** A 30' buffer will be installed along the southern boundary of the property.
6. **Criteria:** The proposed use does not generate environmental impacts which may threaten public health and safety, including, but not limited to, negative impacts to air quality (such as odor, smoke or air pollution), increased flooding due to filling of the floodplain, or a loss of wetlands. **Answer:**
7. **Criteria:** Compatibility with surrounding uses. The proposed Special Exception shall not cause a loss of use or enjoyment of adjacent properties. **Answer:** The establishment of a religious use on this property would be an appropriate buffer between the industrial uses to the north and the more sensitive residential uses to the south and east.
8. **Criteria:** The design of the structures is in harmony with the surrounding area, in both style and scale. **Answer:** The current structure is a single-family residential structure which would be converted for non-residential occupancy.
9. **Criteria:** The petition is not in conflict with the Comprehensive Plan. **Answer:** The Comprehensive Plan proposed high density residential uses for the site, and religious uses are historically compatible with residential development.

Jeannine Nelson, 1497 S. Graham Rd., Greenwood, came forward and was sworn. She stated that modifications to the building have already begun. She is concerned that there are no sidewalks along Allen Rd. and pedestrian traffic will have trouble getting to the site. She is also concerned about increase in traffic in the area. She was concerned there was not adequate notice to adjacent property owners to notify them what was intended for the property.

Tinkle explained that schools and churches are allowed in all zones with approval of a special exception. This is not a rezoning.

Singh came forward for rebuttal. He stated notice was given as required by the rules of the BZA.

Rutherford asked when services would be held. They will be held on Sundays and the building will be available for worship every day for most of the day.

Tinkle asked Mr. Singh if he was familiar with the proposed conditions. Singh replied that yes he was, and he agreed to them. Tinkle read the proposed conditions into the record.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board approve the granting of a Special exception for a Sikh Temple to be located at 1050 S. Graham Rd., with the following conditions:

1. A petition for Annexation and a petition for Commercial Site Plan Approval shall be submitted for review and approval. The plans provided for the Commercial Site Plan shall be prepared by a professional architect, engineer or surveyor and shall be consistent with the requirements of the Ordinance. The property shall not be occupied for non-residential purposes until the Commercial Site Plan petition has been approved and land alterations have been completed.
2. The petitioner shall submit a floor plan, drawn to scale, to the Fire Marshall in conjunction with Commercial Site Plan Approval, in order for the Fire Marshall to determine the maximum occupancy. The occupancy computed by the Fire Marshall shall be used to determine the maximum number of parking spaces provided for the use.
3. The residential structure shall be reviewed by the Office of the State Building Commissioner for Rule 13 compliance for the conversion of a residential structure for nonresidential use. This approval by the State Building Commissioner shall be submitted with the Commercial Site Plan petition.

Seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Special Exception Petition Number V2007-023, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Docket V2007-024 – Dimensional Variance – Clark-Pleasant School Corp. – located at 3030 N. 125 West – request to allow a free-standing sign at the school which is located in an R-2 Residential zone – Clark-Pleasant School Corp., applicant & owner.

Jay Wise, Clark-Pleasant School Corp., came forward and was sworn. The proposed sign will be approximately 9' high. The bottom of the sign will be approximately 6' from grade. There will be an LED area that will be monochrome.

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** It is just a sign and the only request is a variation in height which should improve sight distance along CR 125.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The closest property owners are across CR 125 from our property and their backyards front the road which gives them an additional buffer from the sign. It should not even be noticeable except by traffic on CR 125.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** We have set a standard for our school signs within our corporation and would like to remain consistent. The sign is located within a residential area and it is preferable to minimize the height; however, limiting the height to 4 feet would minimize the effectiveness of the electronic variable message center.
4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10 because **Answer:** The property is located outside the Airspace Overlay District and is more than 18,000 feet from the runway of the nearest public use airport.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that based on the evidence presented that the Board approve the granting of a dimensional variance to Clark-Pleasant School Corp. for a free-standing sign with 6' from bottom of the sign to grade located at 3030 N. 125 W., seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2007-024, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Docket V2007-025 – Dimensional Variance – Charter Crossing – located at 455 S. Greenwood Park Drive – request to allow pylon sign in front of strip shopping center – Charter Crossing, LLC, applicant & owner.

Newspaper notice was only 12 days rather than the required 15 days. Rutherford moved to allow the 13 days notice, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Derrick Christy, petitioner, came forward and was sworn. The proposed sign will measure 4.5' from the bottom of the sign to grade.

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The site whereon the sign would be located is elevated from Fry Road approximately 12 feet. The intent behind this provision of the Ordinance is to ensure adequate sight lines for the traveling public. Because of the elevation of the site, the bottom of the signage area would be elevated approximately 17 feet from the grade of Fry Rd.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The proposal requests a sign consistent with the superior design of the commercial retail center it would serve. The existing retail center, and the proposed sign, are of a superior design, and would not detract from the use and value of surrounding property.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** (1) the retail center is constructed on leased ground under the direction of the owner of Greenwood Park Mall who has imposed conservative signage design guidelines on these out lot parcels and (2) the elevation of the property from Fry Road would result in a sign outside the typical viewing angle of prospective customers traveling along Fry Road.
4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10 because **Answer:** While the property is within the Airspace Overlay District, the property is located approximately 8,250 feet from the runway of the nearest public use airport, which would require a sign height of 82.5 feet to be regulated under that provision of State Statute. The proposed height of the sign is 12 feet.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that based on the evidence presented that the Board approve the granting of a dimensional variance to Charter Crossing for a free-standing pylon sign with 4.5' from bottom of sign to grade located at 455 S. Greenwood Park Drive, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2007-025, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

ANNOUNCEMENTS/REPORTS

Enforcement action for a code violation at 864 Briarwood Drive needs ratification by the Board. Rutherford moved to ratify the approval of the filing of the complaint against Nathan and Kimberly Stevens to enforce the City's Zoning Ordinance regarding side yard setback requirements for accessory structures, and to authorize the City Attorney to take any and all action necessary in the Board's behalf to effectuate this litigation, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved to adjourn, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.** Meeting was adjourned at 7:08 p.m.

JANICE NIX
Recording Secretary

PHIL TINKLE
Chairman